

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SARAH VITORT, a consumer residing in
Oregon, individually and on behalf of all
others situated,

No. 3:20-cv-01317-AC

ORDER

Plaintiff,

v.

THE KROGER COMPANY, an Ohio
Corporation, FRED MEYER STORES, INC.,
an Ohio Corporation, and DOES 1 through
100, inclusive,

Defendants.

HERNÁNDEZ, District Judge:

Magistrate Judge Acosta issued a Findings and Recommendation on September 13, 2021,
in which he recommends that this Court grant Defendants' motion to dismiss. F&R, ECF 24. The

matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

Plaintiff filed timely objections to the Magistrate Judge's Findings and Recommendation. Pl. Obj., ECF No. 29. When any party objects to any portion of the Magistrate Judge's Findings & Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

The Court has carefully considered Plaintiff's objections and agrees with the Magistrate Judge's conclusion and disposition. The Court clarifies that the applicable standard for determining whether product labels are deceptive under consumer protection statutes is as follows: "if the court determines that no reasonable juror could conclude that the product's label was [] deceptive or misleading, dismissal on a Rule 12(b)(6) motion is appropriate." *Silva v. Unique Beverage Co.*, No. 3:17-cv-00391-HZ, 2017 WL 4896097, at *3 (D. Or. Oct. 30, 2017). Because the Court can conclude as a matter of law that members of the public are not likely to be deceived by the product packaging, the Court agrees with Judge Acosta's recommendation to grant Defendants' motion to dismiss. The Court finds no other basis to modify the Findings & Recommendation. The Court has also reviewed the pertinent portions of the record *de novo* and finds no other errors in the Magistrate Judge's Findings & Recommendation.

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CONCLUSION

The Court adopts Magistrate Judge Acosta's Findings and Recommendation [24].
Therefore, Defendants' Motion to Dismiss [16] is GRANTED. Plaintiff's Motion to Strike [34]
Portion of Defendants' Rule 72 Response Brief is DENIED.

IT IS SO ORDERED.

DATED: February 1, 2022.


MARCO A. HERNANDEZ
United States District Judge